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Supreme Court, U.S.
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No. 04-247

IN THE

Supreme Court of the United States

LANHAM FORD, INC., PETITIONER

v.

FORD MOTOR COMPANY, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the motion to remand this case to state court was properly denied.

CORPORATE DISCLOSURE STATEMENT

Ford Motor Company ("Ford") is a publicly-held corporation. Ford has no parent corporation, and there is no other publicly-held corporation owning 10% or more of Ford's stock.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 101 Fed.Appx. 381. The opinion of the district court (Pet. App. 7a-15a) is reported at 273 F.Supp. 2d 691.

JURISDICTION

The judgment of the court of appeals was entered on June 8, 2004. Pet. App. 1a. The petition for a writ of certiorari was filed on August 24, 2004. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

1. This case arose from the decision made by Ford Motor Company ("Ford") in February 2002 to terminate its Sales and Service Agreement ("Agreement") with petitioner, Lanham Ford, Inc., due to the long history of poor performance by that dealership. After receiving notice of termination, petitioner appealed the termination decision to Ford's Dealer Policy Board, an informal dispute resolution body within Ford. Proceedings before the Dealer Policy Board are binding on Ford if the dealer prevails, but are not binding on the dealer if Ford prevails. Pet. App. 13a.

On May 1, 2002, while the Dealer Policy Board was still considering the matter, petitioner protested the termination to the Maryland Motor Vehicle Administration ("MVA") pursuant to Md. Code Ann., Transp. § 15-209. The MVA stayed its proceedings on that protest pending the outcome of the Ford Dealer Policy Board process. On November 8, 2002, the Dealer Policy Board affirmed Ford's proposed termination, rendering petitioner's protest before the MVA ripe for hearing. Pet. App. 8a.

Instead of proceeding before the MVA, however, petitioner filed the present action with the Circuit Court for Prince George's County, Maryland, on November 21, 2002, seeking injunctive and declaratory relief against Ford, and asserting claims under the Agreement, the Maryland dealer statute, and the Maryland Uniform Arbitration Act. Petitioner sought to compel the Dealer Policy Board to rehear petitioner's appeal under a new and different set of procedures, and to enjoin termination of the dealership pending the outcome of that rehearing. Pet. App. 3a.

2. Ford removed the action to the United States District Court for the District of Maryland on December 19, 2002, and

simultaneously moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(6). Petitioner filed a timely motion to remand the case back to Maryland state court. On February 24, 2003, the district court authorized Ford to conduct limited discovery with respect to the value of the Lanham Ford dealership in order to establish the requisite amount in controversy for federal diversity jurisdiction.

On June 23, 2003, the district court denied the motion for remand and granted Ford's motion to dismiss the complaint with prejudice. On the motion for remand, the district court concluded that the object of the litigation was preservation of the dealership and that the value of the dealership exceeded the $75,000 jurisdictional amount. Pet. App. 8a-11a. On the motion to dismiss, the district court found that Ford had fully complied with the procedures established in the Agreement and Dealer Policy Board handbook for matters coming before the Dealer Policy Board. *Id.* at 12a. Since Ford had "complied with all procedures agreed upon by the parties," and Ford was not required "to do more," the court granted the motion to dismiss. *Id.* at 14a.

3. The court of appeals affirmed. Pet. App. 1a-6a. The court of appeals agreed that the motion for remand was properly denied, but the court concluded that the district court had "erred in its conclusion that the object of the litigation was the dealership itself." *Id.* at 4a. The court of appeals reasoned that the object of the litigation was "narrower," for it was focused on petitioner's request for a new hearing before the Dealer Policy Board, "with rights of full discovery, and an injunction against termination of the franchise pending completion of this new hearing." *Ibid.* The court of appeals concluded that the value of these remedial objectives is readily determined as the sum of (i) the value to Lanham Ford of the right to operate its Ford Dealership until completion of a new hearing and (ii) the value to Lanham Ford of the

hearing itself, which the court defined as "roughly equivalent" to petitioner's chance of success at retaining its dealership as a result of this hearing multiplied by the value of petitioner's dealership as a going business concern. *Id.* at 5a. The court noted that the record assembled on the remand motion clearly established that Lanham Ford is a "sizeable dealership, with total sales in 2002 in excess of $56 million and gross profits for that year in excess of $7 million." *Ibid.* The court noted that it "would take several months" for the new hearing requested by petitioner to occur, and that it was "certain[]" that the value of the injunction against any termination of the franchise during that period, along with "the value of the chance to retain its franchise through pursuit of a new hearing," was "in excess of the $75,000 required." *Ibid.* The court therefore affirmed the denial of the motion to remand. *Ibid.*

For the reasons stated in the decision below, the court of appeals also upheld the dismissal of the complaint on the merits. Pet. App. 6a. Petitioner does not challenge that ruling on the merits in its petition for a writ of certiorari. Instead, petitioner seeks review only of the denial of the motion to remand the case to state court. Pet. i, 10.

ARGUMENT

Certiorari is not warranted in this case because the asserted conflict between decisions is illusory and the question presented is important "merely to the litigants" and does not "present an issue of immediate public significance." *Rice v. Sioux City Mem. Park Cemetery, Inc.*, 349 U.S. 70, 79 (1955).

1. A determination of federal subject matter jurisdiction is unique among disputed issues in that, regardless of who has the burden, what constitutes the burden, and whether a party even places the issue of jurisdiction in dispute, the court

ultimately has an independent obligation to satisfy itself that federal subject matter jurisdiction exists.[1] As a result, few, if any, cases turn on the precise articulation of the defendant's burden to establish federal court jurisdiction. Moreover, to the extent that some courts have endeavored to articulate a special burden of proof for removing defendants, they have generally done so in the context of damage actions in which the plaintiff's allegation of damages was below the jurisdictional minimum for diversity jurisdiction. See page 8, *infra*. The present case involves injunctive relief, rather than damages, and the fact-specific determination of the amount in

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[1] Every federal court "has an independent obligation to satisfy itself that federal subject matter jurisdiction exists before proceeding to the merits in any case," regardless of whether the parties or even the district court "has questioned the existence of such jurisdiction." *Smith v. American General Life and Accident Ins. Co., Inc.*, 337 F.3d 888, 892 (7th Cir. 2003) (citing, *inter alia, St. Paul Mercury Indem. Co., v. Red Cab Co.*, 303 U.S. 283, 287 n.10 (1938)). Although "[a]s a technical matter, it is [the removing defendant's] burden to show that [the plaintiff's] complaint states a claim for more than [the jurisdictional amount]," it is equally clear that courts do not limit themselves to the arguments made by the removing defendant. *Smith,* 337 F.3d at 893. The analysis conducted by federal courts involves examining first, and foremost, the complaint to determine the damages requested, or other relief sought, so that the value of the claim can be assessed. *Mehlenbacher v. Akzo Nobel Salt, Inc.*, 216 F.3rd 291, 296 (2d Cir. 2000); *Samuel–Bassett v. Kia Motors America, Inc.*, 357 F.3d 392, 398-399 (3d Cir. 2004). The next step is typically to examine the defendant's petition for removal. *Mehlenbacher,* 216 F.3d at 296. If more is needed to assist the courts in their determinations, they typically ask for more. See *Smith,* 337 F.3d at 892; *Samuel–Basset,* 357 at F.3d at 395.

controversy in this equitable proceeding does not warrant this Court's review.

a. Whatever burden of proof is assigned to Ford as the removing party, and regardless of the particular formula employed to measure the value of the injunctive relief requested by petitioner, the record amply supports the conclusion of the court of appeals that the amount in controversy in this case exceeds the $75,000 diversity jurisdiction threshold.

As the court of appeals explained, during the year in which the complaint was filed, petitioner had sales of $56 million and more than $7 million in gross profits. Pet. App. 5a; see J.A. Vol. II, at 2; J.A. 134 (Hancheruk Dep. at 26). During that year, petitioner sold 1,741 new vehicles and 942 used vehicles. J.A. Vol. II, at 2. As of December 2002, the month in which removal occurred, petitioner had total assets of $16,482,315. J.A. Vol. II, 1; J.A. 134 (Hancheruk Dep. at 26). During that single month, a number of departments of Lanham Ford showed a substantial operating profit – including a $151,798 profit in the parts department, a $712,692 profit in the service department, and over $76,000 in profit from the body shop. J.A. Vol. II, 2; J.A. 140-141 (Hancheruk Dep. at 57-58).

The district court concluded that the object of the litigation was to preserve the dealership, and that the value of the dealership was the appropriate measure for purposes of determining whether federal diversity jurisdiction existed. The court of appeals took a different view, and concluded that the value of the relief sought by petitioner was the sum of (i) the value to Lanham Ford of the right to operate its Ford franchise until completion of a new hearing, and (ii) the value to Lanham Ford of the new hearing itself, which was deemed roughly equivalent to Lanham's chance of success in the

hearing multiplied by the dealership's value as a going concern. Pet. App. 5a. It is not disputed that, under either of these standards, the jurisdictional minimum of $75,000 was clearly satisfied.[2] As the court of appeals correctly concluded, the value of the injunctive relief requested by petitioner "certainly" exceeded the jurisdictional requirement. *Ibid.*

b. There is no basis for petitioner to contend that this conclusion would be different under any plausible articulation of the burden of proof. As the Third Circuit emphasized in *Samuel-Bassett*, 357 F.3d at 397, upon reviewing the same allegedly conflicting burdens of proof identified by petitioner, "[m]any of the variations are purely semantical and we have found no case where the results would have been different had one of the variations described been used."

Because the specific burden of proof was not addressed by the court below and certainly has no bearing on the correct disposition of this case, review of the decision below is unwarranted. As this Court has frequently emphasized, this Court "reviews judgments, not statements in opinions" (*Black v. Cutter Laboratories*, 351 U.S. 292, 297 (1956)) and it does not "decide questions that cannot affect the rights of litigants in the case before them." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990) (internal quotations omitted).

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[2] Petitioner errs in asserting (Pet. 18) that the court of appeals ignored the principle that the amount in controversy is determined as of the time of removal. As the above discussion of the record reflects, the court of appeals appropriately focused on the ample evidence that related to the value of the business operations of Lanham Ford in the year 2002 as a whole and also during the month of December 2002, when removal occurred.

2. The courts that petitioner claims have articulated the "most difficult" standard for the burden of proof in removal cases (Pet. 12) have done so in damage actions in which the complaint expressly alleged damages *less than* the minimum jurisdictional amount for diversity jurisdiction. In *Burns v. Windsor Insurance Co.*, 31 F.3d 1092, 1094-95 (11th Cir. 1994), the Eleventh Circuit stated that the defendant must prove to a legal certainty that the plaintiff's claim exceeds the jurisdictional minimum amount. The court did so, however, in the context of a complaint that, on its face, requested an amount in damages below the minimum threshold for federal court jurisdiction. Because no jurisdiction existed on the face of the plaintiff's claim in that case, the court "believe[d]" the defendant's burden of proof must be a heavy one. *Id.* at 1095.

By contrast, in the present case, petitioner sought equitable relief that was not valued on the face of the complaint. The burden of proof applicable to the determination of the value of such equitable claims is not addressed in *Burns* or in the other cases on which petitioner relies. Moreover, the three-page per curiam decision entered by the court in the present case does not address or even describe the burden of proof that applies to this removal determination. Petitioner's assertion that the decision below conflicts with the decision of any other appellate court is therefore manifestly insubstantial.

3. It is, in any event, neither feasible nor desirable to articulate a single standard or test for measuring the amount in controversy in removal cases that seek a wide and diverse range of injunctive relief. Petitioner decries the absence of a "universal test" for this purpose and maintains that it "was subjected to a valuation of its claim for relief that was entirely ad hoc in this case." Pet. 16. It is obvious, however, that there is no single, "universal test" to apply in valuing the multitude of injunctive remedies that plaintiffs may seek. Instead, as the facts of this case make clear, a determination

of the value of any specific request for injunctive relief necessarily involves particularized inquiries and methodologies. The fact-specific determination of the value of such relief in a particular case does not warrant review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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